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TOM LYTHGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
August 23, 2005**

Present: Commissioners Lythgoe, Notbohm and Weber; Harold Stepper, County Planner; Ben Sautter, Road Supervisor; Tom Harrington, JLDC; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; James Pahre, Jackie Colombe, Shane Schmaus

MINUTES

Commissioner Lythgoe moved to approve the minutes of August 2. Commissioner Notbohm seconded. The motion carried.

Commissioner Lythgoe moved to approve the minutes of August 9. Commissioner Notbohm seconded. The motion carried.

Commissioner Lythgoe moved to approve the minutes of August 16. Commissioner Notbohm seconded. The motion carried.

REPORTS

SECONDARY ROAD PROJECTS

Commissioner Lythgoe stated that counties in the Butte district met some time ago to discuss secondary road and priorities. MDT would like concurrence from the Jefferson County Commission that we agree with these priorities. The project in Jefferson County is paving the Whitetail from Boulder to the Forest Service boundary. The project is fourth on the list, so it will be a while before it is done. He asked if the other Commissioners had any problems with the list. Commissioner Notbohm asked if this is a priority for the county; is there something else they could do instead. Commissioner Lythgoe stated that there aren't a lot of secondary roads in Jefferson County. Commissioner Weber asked if the county has the option to name another road. Commissioner Lythgoe stated that they do not. Commissioner Notbohm asked if there are any other roads, such as the road into East Helena. Commissioner Lythgoe stated that 282 used to be a secondary road, but is now an x-route. Commissioner Weber stated that if all they are voting for is to agree that our road is fourth on the list, then he would move to give approval to the Butte District secondary road priority list. Commissioner Lythgoe seconded. The motion carried.

CALENDAR REVIEW

- 8/24 CTEP meeting - Whitehall - 8:00
Jefferson River Watershed meeting - Whitehall - 7:00
Montana City Bike/Ped Path meeting - 7:00
8/25 Department Head/Elected Official meeting - 10:00
Solid Waste board meeting - 7:00
8/30 South Helena Interchange finance meeting - Helena - 11:00

COMMISSION REPORTS

LIBRARY BOARD

Commissioner Weber stated that he and Glenna Waltee went to the state library to discuss the library district. The state library has come out with the opinion that they encourage districts. There is better funding and they provide for better public involvement on how the library is run. Glenna's concern is the cost involved. The state library couldn't provide a lot of detailed information, as the only library district in the state is in Stevensville. The state library encouraged continued conversation on this topic. Commissioner Notbohm asked if they discussed the Library Director position. Commissioner Weber stated that the county does need to have one, and has been given a one year extension to get someone on board.

GRANT WRITER

Commissioner Lythgoe reported that the Commission met with the JLDC again to discuss the grant writer function. Several options were laid out, which will be presented at the elected official/departments head meeting for feedback.

MONTANA TUNNELS ADVISORY GROUP

Commissioner Lythgoe reported on the MTAG meeting. The meeting was basically a discussion of how to get the word out about mining. They saw the first of two articles that will be in local papers. They also discussed having a public meeting and inviting the public to talk about Tunnels. They decided that the meeting should be held before the public meetings regarding their permits. They also discussed ways to get people to come to the meetings.

DEPARTMENT OF REVENUE

Commissioner Lythgoe stated that the Commissioners met with representatives from the Department of Revenue. He stated that it was a good meeting and they learned quite a bit. He feels more comfortable that they are getting most of the new construction onto the tax roles. 181 new homes and 17 businesses were added in 2004. He stated however, that for some reason we are not able to get a list of everyone in Jefferson County who pays taxes. The Department of Revenue is working on this.

BUILDING EXPANSION

Commissioner Lythgoe stated that it was decided that there is no need to add on to the Paradise House at this time. Instead, offices will be rearranged.

WEED BOARD

Commissioner Notbohm stated that he continues to work with Jay Cole. There were no bids for the weed/mosquito building, as the bid specs were worded incorrectly. The mosquito board also had some concern with the bid, and the bid will be rewritten. He stated that he has some names, and will solicit phone bids. Commissioner Lythgoe asked about the estimated cost of the building. Commissioner Notbohm stated that it should be around \$30,000. They are hoping to have the concrete down before the end of the year. Commissioner Lythgoe asked if there will be any extra room in the building, as they need to move the signs out of the Paradise basement. Commissioner Notbohm stated that the building will be unheated. At the weed board meeting, they reviewed 16 or 18 applications for the weed coordinator position.

ELECTED OFFICIAL/DEPARTMENT HEAD CONCERNS

Commissioner Lythgoe stated that the credit card policy needs to be changed. It is not possible to have one county credit card that is kept in the Clerk and Recorder's office. Several departments will be issued cards - the Sheriff's office, the County Attorney and the Victim Advocate.

CORRESPONDENCE

Commissioner Lythgoe noted that correspondence has been received from the Kyler family, thanking the Commission for restoring the historic road name, and from the Youth Forestry Monitoring Program, thanking the Commission for their continued support of the program.

SUBDIVISION REVIEW

PRELIMINARY PLAT APPROVAL - GRANDE VISTA SOUTH MINOR SUBDIVISION

Harold Stepper, County Planner, presented his staff report. The findings of fact show that three lots are longer than they are wide, and will require that a variance be granted. Harold recommended that preliminary plat approval be granted. Commissioner Notbohm asked how much usable land are in the lots that require a variance. James Pahre, the developer, stated that it is about 2 acres. Commissioner Weber stated that it has come to his attention that the post office is not wild about the placement of the mailboxes, and suggested that Mr. Pahre talk to them about that. Commissioner Weber moved to give preliminary plat approval. Commissioner Lythgoe seconded. The motion carried.

FINAL PLAT APPROVAL - JLDC MINOR SUBDIVISION

Harold presented his staff report and recommended that final plat approval be granted. Commissioner Notbohm stated that his concern would be that this is the final plat approval for this project, but there is still no lease agreement for the land that will be serviced by this. He asked if there is any update on that. Tom Harrington stated that they have a meeting with the mine manager the next day. The lease does not affect this parcel. Commissioner Lythgoe moved to give final plat approval to the JLDC minor subdivision. Commissioner Weber seconded. The motion carried.

FINAL PLAT APPROVAL - HOLT MINOR SUBDIVISION

Harold presented his staff report and recommended that final plat approval be granted. Commissioner Weber moved to grant final plat approval to the Holt Minor subdivision. Commissioner Notbohm seconded. Ben stated that he wants to make sure the 40-foot easement has been changed to a 60-foot easement. Harold stated that this has been done. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

Commissioner Lythgoe stated that there are two items on the agenda that are not going to be dealt with today - *Rescind the Commission decision to remove elected trustee from Basin Fire Trustee Board and Appoint Basin Fire Trustees*. He has been informed by the Clerk and Recorder that she has received two petitions, one to dissolve the Basin Fire Trustee Board, and one to reform the fire department, and she needs to certify the signatures. Jackie Colombe asked if the Commission has received a letter from the Trustee's attorney. Commissioner Lythgoe stated that they have. Jackie stated that she was told by someone that the petition was being presented as being originated with the Commission. When she told this person this was not the case, the person asked how they could remove their name from the petition. Commissioner Lythgoe stated that this is a question for Bonnie. Commissioner Notbohm asked if there is any idea of how long it will take to certify the petition. Commissioner Lythgoe stated that Bonnie thought it would take about a week.

DETERMINATION OF WHERE COUNTY EASEMENT ENDS ON JACKSON CREEK ROAD

Commissioner Lythgoe stated that the Commissioners and the road supervisor took a ride up this road, and the mapping tech did a print-out of how far Jackson Creek goes and what constitutes a county road. He stated that when they drove the road, they all agreed that it goes pretty much up to where the painted gate is. Shane Schmaus asked if there is an easement through the Sterling Price Lode, if there is any record of an easement. Commissioner Lythgoe stated not that he is aware of. Commissioner Notbohm asked if he is talking about the first gate or the second one. Shane stated that he is talking about the second gate. He stated that nothing about an easement came up on the title search. He asked if there are any documents that the previous owner granted an easement. Commissioner Lythgoe stated that, again, he doesn't know of any easements. He asked Ben if he had any information. Ben said the only information he has is what he got from Lonnie. The BLM boundary ends where the rocks are piled, and he sees that this is where the county road ends.

Shane stated that the road used to go all the way through. A private landowner above him put up "no trespassing" signs, but it is the same road. Commissioner Weber asked if his title shows that the road is not a county road. Shane stated that his title company didn't show, and he thinks a 60-foot easement would have affected the loan, as his well is 10 feet from the road, and the house is 20-30 feet from the road.

Commissioner Weber stated that this needs more research; he is not comfortable with making a decision with the information they currently have. Commissioner Notbohm stated that there should be legal records somewhere, if an easement is there. Commissioner Lythgoe stated that he assumes that is what Lonnie used for his information.

Shane asked if anyone can work on the road, upgrade the road, including the part that goes through his property. Commissioner Lythgoe stated that if it is a county road, a person would need an encroachment permit before doing any work. Shane asked if he can protest this, as he doesn't want the road upgraded. Commissioner Notbohm stated that Ben will need a permit before any work is done. Also, he can't see the county upgrading the road on their own. Access is also an issue to the county. Commissioner Lythgoe asked Ben if he had gotten any permits. Ben stated that he hasn't gotten anything on the upper portion of the road.

Shane stated that a half-mile down, is a road that goes to the right and back to Jackson Creek Road, and this is probably the original access to BLM lands. His road was used for access to mining claims. He asked that if the road is to be improved, is there any way to require the use of the original road. Commissioner Lythgoe stated at this point, they wouldn't consider using that portion. The Commission accepted and outlined county roads in 2002. Commissioner Lythgoe stated that Commissioner Samson worked extensively on the road classification and was very meticulous; there should be documentation. Shane asked what if the county has no documentation. Commissioner Lythgoe answered that they would consider whatever documentation is presented.

Shane asked if he can go to the Clerk and Recorder's office and see if there is an easement through the Silver Price Lode. Commissioner Lythgoe stated that Shane could do whatever research is needed, but he personally feels that the road is where it is as accepted in the county road documents. Commissioner Weber stated that the county road classification means that the county can set the maintenance level and do what is needed within the 60-foot easement. Shane asked what will happen if his well is within the easement. Commissioner Weber stated that he is not sure how to answer that. If Shane is able to prove that this portion is not a county road, they will have to look at that. Commissioner Lythgoe stated that a lack of evidence will not work; there needs to be evidence that there is an easement.

Commissioner Notbohm stated that after driving the road, he can't see that the county would want to do anything to the road. Ben stated that there has been some discussion of doing something on lower maintenance roads, to keep them open. As for the well and the house possibly being within the easement, there is always the option for a variance. The county isn't going to make him move his well. Also, if the road is private above, they may develop. Shane stated that his main concern is not the county, but the landowner above him.

Commissioner Lythgoe stated that Ben is not aware of a permit. If the landowner does come in for a permit, Ben is now aware of the well, etc. If the landowner is not aware that a permit is needed, he needs to be told. Commissioner Lythgoe stated that it is to Shane's advantage that it is a county road. Shane stated that there is only one house up there, and it seems unnecessary to develop the road for one house. Commissioner Notbohm stated that Shane needs to be aware

that this is a nice area, and it may be developed at some time. Shane stated that is why he is wanting to find this out now; there is an entire tract up there, and he could have all of Helena driving through his front yard. Harold noted that if a conservation easement is on the property, it is there forever. This would also be on file in the Clerk and Recorder's office.

AWARD METAL MINES GRANTS

Tom Harrington, chair of the metal mines grant committee, presented the committee recommendation for the grants. He stated that all of the grant resources were not used in the spring cycle, so they opened it up again. They only had one qualified applicant, and that was Jefferson Valley Presents. He stated that JVP has gone from being an outdoor theater to an indoor theater. They have had a building donated, and the grant request is for repair of a wall and fix the sidewalks around the building. The grant request is in the amount of \$4,500. Since the grant request was originally put together, concrete prices have gone up \$4.50/yard. Based on that, the committee is recommending that JVP be awarded \$5,500. JVP is coordinating with the adjoining landowner on the sidewalks. If JVP should happen to fold in the future, the building will go to the Town of Whitehall for use as a community center. If the town doesn't want the building, everything will be sold and the money will go back into the grant program. Tom stated that the building is currently getting more use as a community hall. He also stated that not all of the money was used this cycle, so almost \$5,000 will go forward to the next cycle. Commissioner Weber noted that the Senior Center recently redid the sidewalks, and this will extend the new walks to the entire block.

Commissioner Lythgoe moved to approve the metal mines grant in the amount of \$5,500 to Jefferson Valley Presents. Commissioner Weber seconded. Commissioner Notbohm stated that he would like a stipulation as presented by Tom, that if JVP folds, the building will go to the Town of Whitehall. Tom stated that this can be stated in the award letter. The motion carried.

DISCUSS WHO IS RESPONSIBLE FOR PAYING FOR ENGINEERING COSTS AS RELATES TO ENCROACHMENT PERMITS, APPROACH PERMITS AND SUBDIVISION ROADS

Commissioner Lythgoe stated that he wanted to have this discussion, in light of recent events. Commissioner Notbohm stated that he agrees with all of this; everyone knows that he feels it is the responsibility of the developer. The county needs to stiffen regulations of who owes what. Commissioner Weber stated that he agrees with Commissioner Notbohm, except it should apply not just to subdivisions, but anyone who encroaches or needs an approach. Commissioner Lythgoe stated that one reason this has come up is that the County Attorney feels that the language needs to be stronger on both permits. Also, in talking to Harold that morning, there are some questions, although not in his mind, of who should pay for testing of the water system. The developer feels that the fire department should share the costs.

Commissioner Lythgoe asked if this change needs to be done by resolution. Commissioner Notbohm stated that it should be done by resolution, and asked if it would require public meetings if they change subdivision regulations. Harold stated that if something is going to change, they need to open up to public comment. He noted that they need some "umbrella"

language, because they are not going to be able to outline every situation.

Commissioner Weber stated that the road standards state, pretty emphatically, that anyone going to encroach, approach, etc. on a county road needs a permit. If Matt feels that the permit language needs to be different, he is open to that. He feels that all state that work being done isn't to cost taxpayers. Maybe that needs to be stated better in the permit, but it is pretty clear that the person doing the work has to pay for it. Commissioner Notbohm stated that also, if there is need for an engineer, that all needs to be spelled out.

Ben stated that he wasn't prepared for all of this conversation of this. As simple as it is, there is a fee involved. With subdivisions, he is finding that they are taking more and more of his time, and the fee doesn't cover that. He asked when the on-call engineer would take over. Also, he questioned if it is time to take his position out of the subdivision review process. Larger counties are already doing this. In the new road standards, they are starting to step away, and this is going in the right direction. Easy encroachment and approach permits are not a problem. He has always felt that it is up to the developer to bring this forward, and the expense needs to be with the developer, not the county.

Commissioner Lythgoe stated that all agree that the responsibility for these costs needs to be with the developer, but there will need to be more discussion so that everything is stated properly and fully covered. He will discuss this with Matt.

Ben stated that permits are necessarily part of subdivisions; changes can be made without going through all that public review. Commissioner Notbohm stated that they are finding that on some projects that they are having problems with, something should be incorporated in. It should cost the developer more if the Road Superintendent needs to make repeated visits. Commissioner Weber stated that subdivision regulations and road standards both state that the developer pays at this time. Commissioner Lythgoe agreed; the language is already there, but it needs to be made stronger. Ben is still going out five times when he only needs to go out once.

Harold stated that, in the subdivision regulations, if a developer changes something, the county has the ability to charge the developer \$45/hour. If the developer doesn't make a change, that option isn't available, and that is what the county is getting caught into, checking the same project over and over again. He stated that they need to update the regulations. Commissioner Lythgoe stated that it is not part of Harold's or Ben's job to babysit a developer or develop the job for them, but to give them a list of what they are to do. Ben stated that he is glad to hear Commissioner Lythgoe say this. He has found himself lately being asked where the road should go, or what is the process, or who is a good contractor. He is not liking being put into an advisory role. He needs the okay to tell a taxpayer no, I'm not going to come out and design your project. Commissioner Lythgoe stated that if Ben tells someone no, he needs to give a reason, because we are here to help the public. There are a lot of people who don't have a clue, and they can use some direction. It is our responsibility to provide assistance, but we don't have to design the project. Ben stated that he is going to need some direction. With more growth, they will have more problems. Commissioner Lythgoe stated that this is something they will need to talk

about. Commissioner Notbohm stated that what Ben is saying is valid; if he gives a developer a name and it doesn't work out, it will come back onto Ben. Harold stated that there is one way to solve this. If someone asks for a surveyor, contractor, etc., direct them to the yellow pages. Commissioner Lythgoe stated that they always need to be courteous, and to help in any way that we can.

DISCUSS AND DECIDE ON MAINTENANCE LEVELS ON SOUTH HILLS AND HOLMES GULCH ROADS

Commissioner Lythgoe stated that this was discussed the previous week, and he made his position clear. He feels that even before the infrastructure study, because of health, safety and welfare issues such as increased traffic, the county needs to increase maintenance on South Hills and Holmes Gulch Roads. This needs to be done sooner rather than later. Commissioner Notbohm asked, in regards to grading, if they plan to use dynamite. Commissioner Lythgoe stated that the road will require the addition of some material. Commissioner Weber stated that from reading past minutes, the county has been having this discussion for some time, and asked what maintenance level is being proposed. Commissioner Lythgoe stated that this isn't a bus route, but because of the traffic, this road deserves a fairly high degree of maintenance.

Carolyn Zimmer stated that she lives off of South Hills and Holmes Gulch Roads. She asked how the homeowners were notified of these meetings. Commissioner Lythgoe stated that the agendas have been posted in the papers. Carolyn stated that she understands that the county has accepted the road as a county road. Commissioner Lythgoe agreed that this was inadvertently done. Carolyn stated that she understands that a RID has been discussed, and asked what makes this road different from other county roads. Commissioner Lythgoe stated that it is no different. The homeowner's associations have tried to maintain the roads, but have failed miserably. Carolyn stated that her house is right on Holmes Gulch where it will feed into the frontage road. She stated that she hopes this will help with the dust problem.

Commissioner Lythgoe stated that history proves that when they start to fix roads, the initial reaction is positive, but then they end up getting more calls with complaints. It is tough to deal with. They are taking a positive step forward, but it almost seems like they need to have the equipment parked on the road to deal with it. Carolyn stated that she has friends that live on Jackson Creek Road, and they are very pleased with what was done there and the level of maintenance. Commissioner Lythgoe stated that it will take some time to get to that level. It will also take voters on the north end to approve additional money for a hard surface. The reality is, they will probably see less washboards, the same amount of dust and possibly better snow plowing. Carolyn asked if there will be an extra cost to people on Hill Brothers or other roads. Commissioner Lythgoe noted that the road department has a million-dollar budget, and they are only getting done what they are currently. Most people that he has talked to can see the benefit of paying \$300 plus-or-minus a year to do what the homeowner's associations are supposed to do. As for the RID, Ken Vivrette tried for years to get it off of the ground and finally got tired. It takes a lot of dedicated people. As he said at the previous meeting, paving the roads would take 3 to 5 million, and it would take \$500,000 for a double chip-seal. The county just can't afford this. The Commission has had discussions about settings up districts for road maintenance.

Carolyn stated that it seems more fair to raise all of the taxes and bring up all the roads in the county. Commissioner Lythgoe stated that this has been tried, and was voted down. This is why they are considering putting the districts before the voters; the money would stay with the district.

Commissioner Weber asked Ben, as has been discussed before, if the maintenance level is raised in one area of the county, will it mean that it will be lowered in another area. Ben stated that he would like to see the Commission have a plan and maintenance level on this five miles of road - what, how often, when to start, and have the plan through next summer. They need to decide what they are not going to do once they start. A traffic count will determine the maintenance level somewhat. They will be on the road every day, based on the history on other roads. He would like to have a concrete plan to present to the home owners. However, when this is accepted and when they start maintenance, they won't be able to do enough to satisfy the home owners. Commissioner Lythgoe stated that currently, the road is graded once a year. If the road department goes to twice a year and do some snow plowing, that will be appreciated. They won't be on the road every day; they aren't on any road every day. Ben stated that every day won't be enough for that dirt road. Commissioner Notbohm stated that he knows where Ben is going on this. The fact is that Ben only has a certain amount of money in his budget, and something else will have to be cut. He thinks it will be in his district. He has one road, Lump Gulch, that is every bit as busy as Jackson Creek.

Commissioner Lythgoe stated that he thinks that it is time, because of the traffic on the road, to up the maintenance level. They are also looking at this now, at budget time, because they may need to up the road budget. Commissioner Notbohm stated that he has a question about the budget. He asked how many homeowners associations there are in the area. He is not sure how may pay, but if the county can get money from the homeowners associations for dust abatement, it would also help hold the road together. Ben stated that this is his second point. It was said at the previous meeting that only 40% of the homeowners association members are paying their dues. He asked if there is some way to use some of that money. He doesn't want to get out of sequence for the RMD. Commissioner Lythgoe stated that the only way to get money is if we give. However, what Commissioner Notbohm said is valid; we can't force them to give us any of the dues money, but it could be used for dust abatement and handing over the dues could be a contribution to fixing that problem.

Commissioner Weber noted that Ben has said that these roads are offensive to him as a road supervisor and he wants to do something. Bottom line, what is it going to cost. Ben stated that he can come up with a figure when they decide on a maintenance level. However, it still won't be enough, based on the amount of traffic. If people want a better road, the people who use it need to pay for it; there will still be non-paying users, but you have that everywhere. He doesn't know what to do so they are not throwing money away. He needs to have a plan before he makes a move, although it can change as they progress. He hopes to maintain the maintenance level on other roads, and with the proper plan and right dollar amount, he feels he can do that. Commissioner Notbohm suggested that this be taken to a road meeting to discuss and come up

with figures. They need to let people know that money is not available to bring the road up to county standards; they need a variance. They need to draw up a plan and then present at a public meeting. Commissioner Lythgoe stated that he agrees; there is no way to bring these roads up to county standards at this time. But, that doesn't mean that the Commission is not concerned with the health, safety and welfare. They need to step up and come up with a plan. Commissioner Notbohm stated that, in regards to health, they just spent a lot of time and money to fix Sawmill Road. Now they are getting complaints regarding dust, which is a health concern for some. Commissioner Lythgoe stated that the county doesn't have the money to do any dust abatement, without shorting maintenance somewhere else. Ben stated that he has road projects lined out until this time next year. If they are going to do this with no extra money, he would have to bump something. He noted that manpower is also a consideration.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER